



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2011

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2011-18647

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 439453 (ORR# 2011-5246).

The Montgomery County Sheriff's Office (the "sheriff") received a request for information regarding a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code.<sup>1</sup> You also indicate you will redact a Texas driver's license number from the submitted information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

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<sup>1</sup>Although you raised section 552.101 of the Government Code as an exception to disclosure, you made no arguments under this exception. However, because section 552.101 is a mandatory exception to disclosure, we will address its applicability to the information at issue. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified as Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified as Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 provides in part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report.

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted information relates to an investigation by the sheriff of alleged indecency with a child by exposure. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). In this instance, the alleged victim at issue is a child or minor for purposes of section 261.201. *See id.* § 101.003 (defining “child” or “minor” for purposes of Fam. Code ch. 261). Accordingly, we find the submitted information falls within the scope of section 261.201(a). Therefore, the submitted report is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is the parent of the child victim listed in the report and is not alleged to have committed the suspected abuse. Accordingly, the sheriff may not use section 261.201(a) to withhold the submitted report from this requestor. *Id.* § 261.201(k). However, we note that section 261.201(l)(3) provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the submitted information is excepted from public disclosure under section 552.108 of the Government Code. Therefore, we will address the applicability of this exception to the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide a supporting affidavit from an Assistant District Attorney for Montgomery County confirming, the submitted information relates to a pending criminal prosecution. Based on this representation, we conclude release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes the identity of the complainant and a detailed description of the offense. *See Open Records Decision No. 127 at 3-4 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). As noted above, the identity of the party who made the report must be redacted. *See Fam. Code § 261.201(l)(3)*. Accordingly, with the exception of basic information, the sheriff may withhold the submitted report under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the sheriff must withhold the identifying information of the reporting party that you have highlighted on the first page of the offense

report, and the additional information that we have marked on the same page, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. In addition, you raise section 552.147 of the Government Code for an arrestee's social security number in the basic information. Section 552.147 of the Government Code excepts from disclosure the social security number of a living person.<sup>3</sup> Gov't Code § 552.147. The sheriff may withhold the arrestee's social security number under section 552.147 of the Government Code.

To summarize, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the sheriff must withhold the identifying information of the reporting party that you have highlighted on the first page of the offense report, and the additional information that we have marked on the same page, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The sheriff may withhold the arrestee's social security number under section 552.147 of the Government Code. The remaining basic information must be released to the requestor.<sup>4</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>4</sup>We note that the requestor has a special right of access to the information the sheriff is releasing. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

Ref: ID# 439453

Enc. Submitted documents

c: Requestor  
(w/o enclosures)